

(12) Intended use of the noxious weeds;

(13) Measures to be employed to prevent danger of noxious weed dissemination; and

(14) Proposed method of final disposition of the noxious weeds.

(b) *Permit to move noxious weeds interstate.* A responsible person must apply for a permit to move a noxious weed interstate.<sup>3</sup> The application must include the following information:

(1) The responsible person's name, address, telephone number, and (if available) e-mail address;

(2) The taxon of the noxious weed;

(3) Plant parts to be moved;

(4) Quantity of noxious weeds to be moved per shipment;

(5) Proposed number of shipments per year,

(6) Origin of the noxious weeds;

(7) Destination of the noxious weeds;

(8) Whether the noxious weed is established in the State of destination;

(9) Proposed method of shipment,

(10) Approximate date of movement;

(11) Intended use of the noxious weeds;

(12) Measures to be employed to prevent danger of noxious weed dissemination; and

(13) Proposed method of final disposition of the noxious weeds.

(c) *Permits to move noxious weeds through the United States.* Permits to move noxious weeds through the United States must be obtained in accordance with part 352 of this chapter.

[75 FR 68954, Nov. 10, 2010]

#### **§ 360.302 Consideration of applications for permits to move noxious weeds.**

Upon the receipt of an application made in accordance with § 360.301 for a permit for movement of a noxious weed into the United States or interstate, the Administrator will consider the application on its merits.

(a) *Consultation.* The Administrator may consult with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments in other na-

<sup>3</sup>Information on applying for a permit to move a noxious weed interstate is available at [http://www.aphis.usda.gov/plant\\_health/permits/plantproducts.shtml](http://www.aphis.usda.gov/plant_health/permits/plantproducts.shtml).

tions, domestic or international organizations, domestic or international associations, and other persons for views on the danger of noxious weed dissemination into the United States, or interstate, in connection with the proposed movement.

(b) *Inspection of premises.* The Administrator may inspect the site where noxious weeds are proposed to be handled in connection with or after their movement under permit to determine whether existing or proposed facilities will be adequate to prevent noxious weed dissemination if a permit is issued.

[75 FR 68954, Nov. 10, 2010]

#### **§ 360.303 Approval of an application for a permit to move a noxious weed; conditions specified in permit.**

The Administrator will approve or deny an application for a permit to move a noxious weed. If the application is approved, the Administrator will issue the permit including any conditions that the Administrator has determined are necessary to prevent dissemination of noxious weeds into the United States or interstate. Such conditions may include requirements for inspection of the premises where the noxious weed is to be handled after its movement under the permit, to determine whether the facilities there are adequate to prevent noxious weed dissemination and whether the conditions of the permit are otherwise being observed. Before the permit is issued, the Administrator will require the responsible person to agree in writing to the conditions under which the noxious weed will be safeguarded.

[75 FR 68954, Nov. 10, 2010]

#### **§ 360.304 Denial of an application for a permit to move a noxious weed; cancelation of a permit to move a noxious weed.**

(a) The Administrator may deny an application for a permit to move a noxious weed when the Administrator determines that:

(1) No safeguards adequate or appropriate to prevent dissemination of the noxious weed can be implemented; or

(2) The destructive potential of the noxious weed, should it escape despite

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proposed safeguards, outweighs the probable benefits to be derived from the proposed movement and use of the noxious weed; or

(3) The responsible person, or the responsible person's agent, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and failed to demonstrate the ability or intent to observe them in the future; or

(4) The movement could impede an APHIS eradication, suppression, control, or regulatory program; or

(5) A State plant regulatory official objects to the issuance of the permit on the grounds that granting the permit will pose a risk of dissemination of the noxious weed into the State.

(b) The Administrator may cancel any outstanding permit when:

(1) After the issuance of the permit, information is received that constitutes cause for the denial of an application for permit under paragraph (a) of this section; or

(2) The responsible person has not maintained the safeguards or otherwise observed the conditions specified in the permit.

(c) If a permit is orally canceled, APHIS will provide the reasons for the withdrawal of the permit in writing within 10 days. Any person whose permit has been canceled or any person who has been denied a permit may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the cancellation or denial. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully canceled or denied. The Administrator will grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

[75 FR 68954, Nov. 10, 2010]

### § 360.305 Disposal of noxious weeds when permits are canceled.

When a permit for the movement of a noxious weed is canceled by the Admin-

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istrator and not reinstated under § 360.304(c), further movement of the noxious weed covered by the permit into or through the United States, or interstate, is prohibited unless authorized by another permit. The responsible person must arrange for disposal of the noxious weed in question in a manner that the Administrator determines is adequate to prevent noxious weed dissemination. The Administrator may seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Administrator deems appropriate, any noxious weed that is moved without compliance with any conditions in the permit or after the permit has been canceled whenever the Administrator deems it necessary in order to prevent the dissemination of any noxious weed into or within the United States.

[75 FR 68954, Nov. 10, 2010]

### § 360.400 Treatments.

(a) Seeds of *Guizotia abyssinica* (niger seed) are commonly contaminated with noxious weed seeds listed in § 360.200, including (but not limited to) *Cuscuta* spp. Therefore, *Guizotia abyssinica* seeds may be imported into the United States only if:

(1) They are treated in accordance with part 305 of this chapter at the time of arrival at the port of first arrival in the United States; or

(2) They are treated prior to shipment to the United States at a facility that is approved by APHIS<sup>4</sup> and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of § 319.37–6 and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be certified in accordance with the conditions described in § 319.37–13(c) of this chapter.

<sup>4</sup>Criteria for the approval of heat treatment facilities are contained in part 305 of this chapter.